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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7063

[Filed December 16, 2009]

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM SHORTER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:98-cr-00192-JCC-3)

Submitted: November 10, 2009
Decided: December 16, 2009

Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jeffrey M. Brandt, ROBINSON & BRANDT, P.S.C., Covington, Kentucky, for Appellant. Chuck Rosenberg, United States Attorney, Morris R. Parker, Jr., Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Shorter appeals the district court's order granting his 18 U.S.C. § 3582(c) (2006) motion. Shorter argues that he should receive a new full sentencing hearing in light of United States v. Booker, 543 U.S. 220 (2005), or at least resentencing applying the Sentencing Guidelines as advisory. This claim is without merit. See United States v. Dunphy, 551 F.3d 247, 251-53 (4th Cir.) (holding that "proceedings under § 3582(c)(2) do not constitute a full resentencing of the defendant" and stating that the rule in Booker regarding proof requirements for facts that increase criminal penalties "has no application to proceedings under § 3582(c)(2)"), cert. denied, 129 S. Ct. 2401 (2009). We have reviewed the record and find no

reversible error.* Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* We note that the Government did not file a cross-appeal to challenge the district court's amended sentence below the mandatory minimum 240-month sentence. Therefore, the alleged error may not be addressed on appeal. See Greenlaw v. United States, 128 S. Ct. 2559, 2564-67 (2008).

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7063
(1:98-cr-00192-JCC-3)

[Filed December 16, 2009]

UNITED STATES OF AMERICA,	)
	)
Plaintiff - Appellee	)
	)
v.	)
	)
WILLIAM SHORTER,	)
	)
Defendant - Appellant	)
	)

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

No. 1:98cr192-3 (JCC)

[Filed June 6, 2008]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
WILLIAM SHORTER,	)
	)
Defendant.	)
	)

ORDER

This matter comes before the Court upon Defendant's unopposed motion for reduction in sentence of imprisonment pursuant to 18 U.S.C. § 3582(c)(2). Based on the defendant's motion, it appears that the defendant is eligible for such relief, and for good cause shown, and it appearing there is an agreement between the parties, the motion is granted.

For this reason, it is accordingly

ORDERED that the Defendant's sentence of imprisonment is reduced from 262 months to 210

months. In all other respects, the Judgment in a Criminal Case entered on November 6, 1998 shall remain in full force and effect.

IT IS FURTHERED ORDERED, that if the resulting total sentence of imprisonment is less than the amount of time the defendant is already served, the sentence is reduced to a time-served sentence.

The Clerk is directed to forward copies of this Order to counsel of record, the Probation Office, the Marshals Service, the Bureau of Prisons, and the United States Sentencing Commission.

Entered this 6th day of June, 2008.

JCC /s/
James C. Cacheris
United States District Judge

Alexandria, Virginia